

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

In re:	*	Case No. 10-33648
JAMES EDWARD BREWER PENNY ANN BREWER	*	Chapter 13
Debtors	*	Judge Humphrey

JAMES EDWARD BREWER PENNY ANN BREWER 125 John Street Franklin, OH 45005	*	Ad. Pro. No.
Plaintiffs/Movants	*	
vs.	*	
GMAC Mortgage, LLC c/o CSC Lawyers Incorporating Service 50 W. Broad Street, Suite 1800 Columbus, OH 43215	*	
Defendant/Respondent	*	

COMPLAINT TO MODIFY THE RIGHTS OF DEFENDANT

Richard E. West
& Associates
195 E. Central Ave.
Springboro, Ohio
45066
(937) 748-1749
Fax 748-9552

Plaintiff, by and through counsel, moves the Court for an order avoiding the lien of the Defendant, GMAC Mortgage, LLC., as follows:

1. Plaintiff filed a Chapter 13 Petition on June 4, 2010.
2. The Plaintiff's Plan was confirmed on September 20, 2010.

3. This Complaint seeks a determination that the mortgage held by the Defendant is wholly unsecured. This is an action arising in or related to a bankruptcy case, and is a core procedure pursuant to 28 U.S.C. Section 1334, 28 U.S.C. Section 157, and Bankruptcy Rule 7008(a). The Court has jurisdiction in this case.

4. The Plaintiffs own the real estate located at and commonly known as 125 John Street, Franklin, OH 45005 Warren County. The legal description of said property is as follows:

Parcel # 04-26-378-025

Known As: 125 John Street, Franklin OH 45005 Situate in the County of Warren in the State of Ohio and in the City of Franklin and being Lot numbered Two Hundred Fifteen (215), as the same is known and designated on the recorded plat of Laynecrest Park, Section 3, a plat of said subdivision being recorded in Plat Book 4, Page 167 of the Warren County, Ohio Plat records.

5. The fair market value of the said property is \$82500.00. A copy of the appraisal is attached hereto, marked as Exhibit A.

6. There is a first mortgage in favor of HSBC Mortgage, which had a balance at the time this case was filed in the amount of \$101765.37. A copy of the Proof of Claim filed in the within action is attached hereto, marked as Exhibit B.

7. There is a second mortgage in favor of GMAC Mortgage LLC which had a balance at the time the case was filed in the amount of \$26250.00. GMAC Mortgage LLC has not yet filed a Proof of Claim.

9. There is no equity in the second mortgage held GMAC Mortgage LLC.

9. In accordance with this Court's Decision in *In Re: Ernst* (U.S. Bankruptcy Court, Southern District of Ohio, at Dayton, Case No. 00-5663, Ad. Pro. No. 01-3048), the holder of a wholly unsecured mortgage is not entitled to the protection of 11 U.S.C. 1322(b)(2).

WHEREFORE, Plaintiff requests an Order declaring the second mortgage on the property held by the Defendant to be wholly unsecured, and further ordering, on successful completion of the Plan, that this mortgage on said real estate be discharged, and ordering the Defendant to cause a release of mortgage to be filed with the county recorder's office in which the lien was filed, and in the event the Defendant fails to do so, that said county recorder's office be ordered to accept for filing an entry reflecting the discharge of said mortgage in lieu of said mortgage release.

/s/Richard E. West _____
Richard E. West (#0033319)
Attorney for Plaintiff
195 East Central Avenue, P. O. Box 938
Springboro, Ohio 45066
Telephone: (937) 748-1749
Fax: (937) 748-9552
E-mail: rew@debtfreeohio.com